on the defendant whatever. Woodward, *The Law of Quasi Contracts* (1913) sec. 65; 1 Williston, *Contracts* (1920) 82, note 53. It seems that the principal case falls under the last proposition named. The provision for a specific monthly salary excludes the probability that the bonus was intended as compensation and indicates that the plaintiff was relying on the defendant's fairness and liberality. This gives rise to only a moral obligation, and the principal case seems correct in refusing a recovery. However, if the plaintiff can show a custom that a certain percentage was usually paid as a bonus in those trades, and that the parties had such a custom in mind when entering into the agreement, then it is probable that a recovery would be allowed on the contract. See *Varney v. Ditmars* (1916) 217 N. Y. 223, 233, 111 N. E. 822, 826.

EQUITY—INJUNCTION—ERROR TO ENJOIN CASE ON APPEAL.—A lessor sued a tenant for rent due from a subtenant who remained in possession after the end of the term. Because of the small judgment, he appealed to the circuit court and simultaneously brought another action for later rent, but before either the appeal or the new case had been tried, the tenant perpetually enjoined him from bringing any more suits and also from further prosecuting the case pending an appeal. *Held,* that the chancellor erred in enjoining the lessor from proceeding with the appeal and should have only enjoined later actions until the termination of the first. *Kansas City Breweries Co. v. Markowitz* (1920, Mo. App.) 221 S. W. 398.

There is no authority for restraining an action at law in which all issues may be fully determined nor for enjoining a case on appeal. *Fraley & Carey v. Delmont* (1906) 110 App. Div. 468, 97 N. Y. Supp. 408; *Galey v. Montgomery Co.* (1910) 174 Ind. 181, 91 N. E. 593; Judicature Act (1873) 33 & 37 Vict. c. 66. But where a multiplicity of suits seems threatened, all may be enjoined but one. *Cuthbert v. Chauvet* (1891, Sup. Ct. Gen. T.) 14 N. Y. Supp. 385; 1 Pomeroy, *Equity Jurisprudence* (4th ed. 1918) sec. 254. And the discretion of the judge alone apparently decides which of the actions should proceed. See *Cuthbert v. Chauvet, supra,* at p. 386. By older and more prevalent practice an injunction would not be granted restraining successive legal actions unless the plaintiff in equity had previously successfully defended his case at law. *West v. Mayor of N. Y.* (1844, N. Y. Ch.) 10 Paige, 539; *Cleland v. Campbell* (1898) 78 Ill. App. 624. But by the more modern minority rule an injunction may issue before any suit at law has been brought. *Aimee Realty Co. v. Haller* (1907) 128 Mo. App. 66, 106 S. W. 588; see *Galveston etc. Ry. v. Dowe* (1888) 70 Tex. 5, 10, 7 S. W. 368, 370. But no general rule can be found. Each case rests upon its own merits and the prevention of multiplicity should not be considered more important than the adequacy of the legal remedy, or suppose all successive actions to be vexatious. *Pioneer Truck Co. v. Clark* (1919, Calif.) 186 Pac. 839; 1 Pomeroy, *Equity Jurisprudence* (4th ed. 1918) sec. 254 ff.; see *Hale v. Allinson* (1902) 188 U. S. 56, 77, 23 Sup. Ct. 244, 252. In every case of such an injunction it must be possible to determine the different suits by the settlement of one or more issues of law or of fact common to all. *St. Louis etc. Ry. Co. v. Woldert* (1914, Tex. Civ. App.) 162 S. W. 1174. The decision in the one suit may be a decision of all, *i. e.,* if a point of law. *Third Ave. R. R. Co. v. Mayor etc. of N. Y.* (1873) 54 N. Y. 159. The injunction, therefore, at the most, merely postpones the time of enforcement of the demands in issue. *Norfolk etc. Hosiery Co. v. Arnold* (1894) 143 N. Y. 265, 38 N. E. 271. The principal case seems sound, although its exercise of equitable jurisdiction is necessarily somewhat unusual, because of circumstantial limitations.

MUNICIPAL CORPORATIONS—LIABILITY FOR TORTS—DEFECT IN ORIGINAL PLAN OF HIGHWAY COMMISSIONER.—The plaintiff sought damages from the State Highway

Commissioner for injuries caused when the wheels of his motor truck crushed through a drain built under the roadway. The highway had been improved pursuant to a plan adopted by the Commissioner and a drain placed under the road. At the place of the accident the drain was covered with gravel a foot in thickness, which was insufficient to support the weight of the plaintiff's truck. The lower court found that the Commissioner had knowledge of the manner of construction from plans and specifications in his possession, but that he had not been negligent in failing to keep the road in proper repair. *Held,* that the Commissioner was liable, not for any defect in the original plan, but for a continuance of that defect after notice. *Perrotti v. Bennett* (1920, Conn.) 109 Atl. 890.

The courts have generally accepted the rule that municipal corporations or their officers are not liable for injuries caused through a defect in the original plan of an improvement where the defect arises through an error in judgment. 4 Dillon, *Municipal Corporations,* (5th ed., 1911) sec. 1626. In making such an improvement the corporation is exercising a discretionary and legislative power. 6 McQuillin, *Municipal Corporations* (1913) sec. 2633. But where the defect has arisen through plans negligently adopted and is not the result of a mere error in judgment, there is liability. *North Vernon v. Voegler* (1885) 103 Ind. 314, 2 N. E. 821; *Kelsey v. New York* (1908) 123 App. Div. 381, 107 N. Y. Supp. 1089. In numerous cases regarding defects in sewers and drains which have caused a direct invasion of the plaintiff's real property or have constituted a nuisance, the courts have held that there was liability for a defective plan, placing emphasis upon the idea that there had been a direct trespass upon the plaintiff's land. *King v. Kansas City* (1897) 58 Kans. 334, 49 Pac. 88; *Ashley v. Port Huron* (1877) 35 Mich. 296; *contra, Buckley v. New Bedford* (1891) 155 Mass. 64, 29 N. E. 201. Notice of the defective plan is generally said to be a condition precedent to liability, for not until after notice does there arise a duty to remedy the defect. *Seifert v. Brooklyn* (1886) 101 N. Y. 136, 4 N. E. 321; *Stoddard v. Winchester* (1891) 154 Mass. 149, 27 N. E. 1014. But if the defect is inherent in the plan, this fact is sometimes held operative in place of actual notice. *Hart v. Neillsville* (1909) 141 Wis. 3, 123 N. W. 125. The Connecticut statute imposes liability only for a neglect to repair. Conn. Rev. St. 1918 sec. 1414. See *Hoyt v. Danbury* (1897) 69 Conn. 341, 351, 37 Atl. 1051, 1054. In the instant case the court held that the drain constituted a defect from the time it was laid, and that the continuance of the defect was such a failure to keep the road in proper repair, as placed liability upon the commissioner.

PERSONS—MARRIAGE—ANNULMENT FOR FRAUD BEFORE CONSUMMATION.—The petitioner, a young girl, sued to annul a marriage for misrepresentations by the defendant regarding his moral character and habits. The marriage was not consummated and was promptly disaffirmed by her on discovery of the fraud. *Held,* that the marriage might be annulled. *Ysern v. Horter* (1920, N. J. Eq.) 110 Atl. 31.

As a general rule, habits and character are not held such an essential of the marital relation that a misrepresentation regarding them is ground for annulment. 18 R. C. L. 414. It is against public policy to declare children illegitimate and destroy the home for such cause. See Fessenden, *Nullity of Marriage* (1899) 13 HARV. L. REV. 110, 112. But, in the instant case, the court makes a distinction, not generally recognized, between consummated and unconsummated marriages. 1 Bishop, *Marriage and Divorce* (6th ed. 1881) secs. 166, 172; *Wier v. Still* (1870) 31 Iowa, 107. In this case there is no possibility of children, and the parties have not actively entered into the marriage relation. Their status is similar to that of parties to an executory contract. 19 Am. & Eng. Encyc. 1184. Fraud is not a cause of divorce. See *Henneger v. Lomas* (1896)